



CONFIDENTIAL

## **APPENDIX 7-8**

Water rights agreement with the town of  
Alton, Utah



CONFIDENTIAL

## EXCESS WATER USE AGREEMENT

THIS EXCESS WATER USE AGREEMENT ("Agreement") is made this 27 day of June, 2007, by and between **Alton Town, Inc.** a municipal corporation under the laws of the State of Utah, (hereafter "**Town**"), with a mailing address of P.O. Box 100781, Alton, Utah, 84710-0781 and **Alton Coal Development, LLC** (hereafter "**Company**"), with a mailing address of P.O. Box 1230, Huntington, Utah, 84528

### RECITALS

A. WHEREAS Town owns certain underground water which point of diversion is located in or about the Town Premises, said water rights currently having the capability of producing water in excess of the Town's current need or immediate future demand; and

B. WHEREAS, in order for the Town to preserve its interest in the excess water and to avoid a potential forfeiture, and to assure that the same has been put to beneficial use, the Town has resolved that the water should be temporarily delivered to Company for temporary beneficial use; and

C. WHEREAS Company desires to use said water for mining purposes which shall be a beneficial purpose to the Town; and

D. WHEREAS the Town of Alton has excess water whereby it desires to temporarily distribute said excess water outside its boundary limits for a fee and for the financial benefit of its citizens, provided said water is not required by Town residents; and

E. WHEREAS Company has been placed on notice that in the event there is a water shortage, state law requires that all users of Town water outside of Town limits are required to be terminated ; and

F. WHEREAS the Company and Town, (hereafter collectively referred to as "Parties"), desire to enter into an agreement for the Parties mutual benefit; and

G. WHEREAS both parties represent that all dealings with this matter shall be with full disclosure; and

NOW, THEREFORE, based upon the mutual covenants and promises hereinafter set forth, the parties agree as follows:

1. **Delivery of Water.** Pursuant to the Town's authority to deliver and provide public water services, both inside and outside of Town limits, Town agrees to permit Company to utilize, at Company's own maintenance, outlay and cost, a total of Fifty (50) acre feet of water per year, from underground water right number 85-774. Company shall have the right, at its option, to draw the water from one of the following sources:

- (a) an existing well located upon the Sorensen Ranch; or
- (b) drill a new well at a location convenient to the Company; or
- (c) from water generated at the mine site from the Mining Operations conducted by the Company.

Regardless of location of the Water Source utilized by the Company, the Company shall be responsible for the purchase and acquisition of all easements necessary to bring the water to the Company, or to make the Well accessible to the Company for its use and the Company agrees to pay all of its costs to transport the water from the point of diversion to its place of use of the water in its mining and other related operations.

2. **Execution Fee.** The Company, for and in consideration of the execution and simultaneously with the delivery of this Excess Water Use Agreement, shall pay unto the Town the sum of Thirty Thousand Dollars (\$30,000.00) as a one time Execution Fee for the right to the use

of Fifty (50) acre feet of Town water rights, the receipt and sufficiency of which is hereby acknowledged by Town. The Execution Fee is a single, lump sum fee, which is not recoupable for any purpose(s), hereunder.

3. **Change Applications.** Town acknowledges that a temporary change application(s) must be filed with the Utah State Division of Water Rights (Division). The Town will expeditiously file and process all necessary applications and obtain all necessary permits or amendments to all applicable water permits to allow Company to divert the water sought by the Company. Company will support the filing and approval of the application(s).

(a) Further, in the event that Company elects to do so, Town will cooperate with Company by filing a change application(s) on behalf of Company seeking approval to move the fifty (50) acre-feet of water to an underground water well to be located and used by Company near the coal processing facility in Sink Valley or to the mine site pit.

(b) The Parties recognize that no water can be diverted from the new water sources and beneficially used without first receiving approval of the application(s) from the State Engineer which shall be accomplished by Town.

4. **Documentation of Use.** Company agrees to utilize the water for mining and other related purposes and while using the same, shall keep records of the location, purpose and amount of water utilized, and deliver said records to Town on or before July 1<sup>st</sup> of each year, with the first report due July 1, 2008 and thereafter so long as this Excess Water Use Agreement is in effect.

5. **Consideration for Use and Delivery of Water.** In consideration for use of Town's water, and in addition to the one time Execution Fee, Company agrees to pay One Hundred Dollars (\$100.00) per acre foot per year for each acre foot of water used by Company, as compensation for the temporary use and enjoyment of said water for that one (1) year period. Payment shall be made

on a fiscal year basis with the same being payable on or before July 1<sup>st</sup> of each year for the year ending June 20<sup>th</sup>, with the first annual payment due and payable no later than July 1, 2008, and continuing each year thereafter until this Excess Water Use Agreements and the right of Company to draw water either terminates or expires.

6. **Abatement and Termination of Water Use.** In the event of a water shortage, Town will provide one hundred eighty (180) days written notice of its intent to abate the right of Company to divert water for its own purposes until the Town determines that the water shortage is resolved or this Excess Water Use Agreement is otherwise terminated.. Company or Town may, with or without cause and with eighty (180) days written or verbal notice, terminate this Excess Water Use Agreement and relinquish its right to diversion and use of said water. If either Company or Town terminates use of the water, the Parties waive any claim for reimbursement.

7. **Use of Water.** This agreement is to be construed and is drafted in accordance with Article 11, Section 6 of the Utah State Constitution. This agreement does not constitute a sale, lease, alienation or disposal of water rights, but rather a delivery of excess or surplus water for temporary use by Company and only for so long as Town deems the same to be appropriate and in the best interest of its citizens.

8. **Exclusion of Warranty or Representations.** Town makes no representation as to the water supply, either quality or quantity, and each party represents to the other that no verbal representations have been made.

9. **Option.** There is an existing well that is located at UTM NAD 27 coordinates of N4144990 E371043, owned by the Town (the "Town Well") in which the Town grants to the Company the option to use up to an additional Fifty (50) acre feet of excess water per year from that source, in addition to the water set out in section 1 above ("Additional Water"). In the event that

the Company shall require more than the Fifty (50) acre feet of water per year provided for by this Excess Water Agreement, the Company shall have the right, upon (30) days written notice of its desire, to obtain use of the Additional Water. In the event that Company desires to exercise its right to the use of the additional Fifty (50) acre feet of water, then Company will be subject to the additional following terms and conditions:

(a) Company shall pay unto the Town the sum of Thirty Thousand Dollars (\$30,000.00) as a one time Additional Use Fee for the right to use Fifty (50) acre feet of Additional Water derived from the water rights associated with the Town Well, with payment to be made simultaneously with the delivery of the notice by Company of its intention to exercise its right to the use of Additional Water.

(b) Upon approval of the Application for Temporary Change for the additional fifty (50) acre feet, Company will be required to refurbish and restore the Town Well to operating condition at its sole expense. The work will be done in a workman like fashion using appropriate parts and materials to complete the work in a manner to return the Town Well to a producing condition, which will allow for water flow to cultivated fields, irrigation pond, or City water tanks at the direction of Town. The work to refurbish and restore the Town Well will include, but not be limited to the following necessary items:

- (i) Replacement of the submersible water pump;
- (ii) Clean out well (if necessary);
- (iii) Repair any and all electrical service required to run pump;
- (iv) Repair pump building; and
- (v) Repair pump valving.

(c) So long as Company is utilizing the Town's water well, then Company shall have the responsibility to maintain the well and pump. Company shall also have the responsibility to maintain the delivery system to Company's point of use which is being utilized for the sole benefit of Company. Company shall assure that the water is utilized for beneficial purposes and shall not commit waste of said water such that a claim on lack of beneficial use may be raised.

(d) In consideration for use of the additional water source, Company agrees to pay One Hundred Dollars (\$100.00) per acre foot per year for each acre foot of water used by Company, derived from the additional water source as compensation for the temporary use and enjoyment of said Additional Water for that one (1) year period. The annual payments shall be made at the same time as the annual payments to Town for the base water source.

(e) Town will acknowledge the right of Company to draw the additional water from a new point of diversion designated by Company, with the precise diversion point to be designated by Company at the time it give its notice of intent to draw the Additional Water.

10. **Miscellaneous Terms.**

(a) **Entire Agreement.** This Agreement embodies the entire agreement between the parties and cannot be varied except by the written agreement of the parties.

(b) **Survival.** All representations, warranties, covenants, obligations and agreements contained herein shall survive the execution and delivery hereof.

(c) **Time of Essence.** Time is of the essence of this Agreement.

(d) **Notices.** Any notice required or permitted to be delivered hereunder shall be deemed to be delivered (i) when delivered, if personally delivered or by an overnight or other courier service, or (ii) whether or not actually received, when deposited in the United States mail, postage prepaid,

certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address set opposite the signature of such party hereto.

(e) **Successors and Assigns.** All of the terms and conditions of this Agreement are hereby made binding on the successors and permitted assigns of both parties hereto.

(f) **Gender, Numbers.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa unless the context requires otherwise.

(g) **Headings.** The captions used in connection with the articles and sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language of this Agreement.

(h) **Effective Date.** All references to the "date of this Agreement" or the "date hereof" or similar references shall be deemed to mean the date first written above.

(i) **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH; AND PERFORMANCE AND VENUE SHALL BE IN KANE COUNTY.

(j) **Holidays.** If the final date of any period provided for herein for the performance of an obligation or for the taking of any action falls on a Saturday, Sunday or banking holiday, then the time of such period shall be deemed extended to the next day which is not a Saturday, Sunday or banking holiday.

(k) **Attorneys' Fees.** In the event that a legal action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to collect its costs of court, including reasonable attorneys' fees.



(l) **Interpretation.** The parties acknowledge that each party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments of exhibits hereto.

(m) **Severability.** If any provisions of this Agreement are held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement, provided that both parties may still effectively realize the complete benefit of the transaction contemplated hereby.

(n) **Amendments.** No modification or amendment of this Agreement shall be effective unless made in writing and executed by both Seller and Purchaser. In the event any approval or consent is required pursuant to any provision of this Agreement, such approval or consent shall be deemed given only if it is in writing, executed by the party whose approval or consent is required.

(o) **Further Documents.** Both parties shall execute such documents hereafter from time to time as may be required to carry out the respective obligations of the parties hereunder.

(p) **Authority.** The person signing this Excess Water Use Agreement on behalf of the Town, has been duly authorized to do so and all terms and conditions have been approved pursuant to all local ordinances and the laws of the State of Utah.

(q) **Term and Renewal.** This Excess Water Use Agreement, unless otherwise terminated, shall be for a period of ten (10) years, with the right of Company to renew upon the

same terms and conditions (without payment of new Execution Fee or Option Fee) for up to two (2) separate ten (10) year renewal terms.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this 27 day of JUNE, 2007.

Alton Coal Company

By: \_\_\_\_\_

Its: \_\_\_\_\_

Alton Town, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_